## REMARKS

Claims 1-37 are pending, with claims 1, 19, and 37 being independent. Claims 1, 19, and 37 have been amended. Support for the amendments is found at, for example, page 15, lines 18-23. No new matter has been introduced.

**Rejections under 35 U.S.C. §102 and §103**

Claims 1-6, 8-24, and 26-37 stand rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 6,832,253 to Auerbach ("Auerbach") and claims 7 and 25 stand rejected under 35 U.S.C. §103 as being rendered obvious over Auerbach in view of Astarabadi (U.S. Patent No. 6,910,064). These rejections should be removed because Auerbach and Astarabadi, alone or in combination, fail to describe or suggest all of the limitations of the of the amended independent claims.

As amended, claim 1 recites a method of enabling a client to access content. An instruction is received on a client from a client application indicating a client request to access content. The client application on the client accesses a list of content sources capable of rendering the content for which access is requested by the client. The client application on the client is used to request identical portions of the content from each of the content sources in the list of the content sources. The client application on the client is used to determine, based on requesting the identical portions of the content, a performance metric describing an ability for the content source to support the client as measured by the client between each of the at least two of the content sources. The performance metrics for the content sources are compared. The client application on the client is used to selecting among the content sources based on the comparison of the performance metrics for the content sources to identify a content source to be accessed by the client. The client application on the client is used to render the identical portion of the accessed content and a subsequent portion of content that follows the identical portion of the accessed content from the selected content source.

Auerbach fails to describe or suggest, "determining, using the client application on the client and based on requesting the identical portions of the content, a performance metric describing an ability for the content source to support the client as measured by the client between each of the at least two of the content sources ... and rendering, using the client application on the client, the identical portion of the accessed content and a subsequent portion of

content that follows the identical portion of the accessed content from the selected content source," as required by amended independent claim 1. Instead, Auerbach describes a system where a server relies on central network management system that measures the number of hops or the size of a link between two devices. See Abstract. Auerbach indicates that if the proximity is less than desired, an alternate server may be identified and configured to host the content. See Fig. 2, step 254. The control system block 215 measures the network distance between the video server and the client across the wide area network 203.

Auerbach relies on the control system block identifying the number of links to predict whether the client would experience a high quality connection. In making this decision using the perspective of what the control system block observes, Auerbach necessary fails to describe or suggest, "determining, using the client application on the client and based on requesting the identical portions of the content, a performance metric describing an ability for the content source to support the client as measured by the client between each of the for at least two of the content sources ... and rendering, using the client application on the client, the identical portion of the accessed content and a subsequent portion of content that follows the identical portion of the accessed content from the selected content source," as recited by amended independent claim 1. Applicants' specification recognizes the differences in the approach employed by Auerbach in noting, "it may be difficult for the content provider to account for or react to adverse network conditions occurring between the content source and the client device. Put differently, the content source may not understand how the communications system operates from the client perspective. For this and/or other reasons, a better user experience may be provided by enabling the client to determine and operate in a manner to realize the best user experience." The secondary reference, Astarabadi (U.S. Patent No. 6,910,064) was relied on for its disclosure of server authentication, and fails to remedy the deficiencies of Auerbach discussed above. Accordingly, withdrawal of the rejection of claim 1 and its dependent claims is respectfully requested. Independent claims 19 and 37 have been similarly amended and are believed to be allowable for at least the same reasons that claim 1 is allowable.

The $810 RCE fee and the $490 Petition for Extension of Time fee are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. No other fees are believed due. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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